

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JFXD TRX ACQ LLC,

Plaintiff,

v.

EAST RIVER JW INC,

Defendant.

CASE NO. 2:24-cv-00594-JNW

ORDER DENYING PLAINTIFF'S
MOTION FOR ALTERNATIVE
SERVICE

1. INTRODUCTION

Before the Court are Plaintiff JFXD TRX ACQ LLC's Motion for Alternative Service, Dkt. No. 6, and Request for Judicial Notice, Dkt. No. 8. After considering the motions, the record, and the law, the Court is fully informed. For the reasons below, the Court GRANTS Plaintiff's Request for Judicial Notice, Dkt. No. 8, and DENIES Plaintiff's Motion for Alternative Service, Dkt. No. 6.

2. BACKGROUND

Plaintiff filed this patent infringement case on April 30, 2024, naming East River JW Inc. ("East River") as a defendant. East River is registered as a domestic business corporation in New York. When East River registered with the New York

1 Secretary of State, it provided a Brooklyn business address, which was recorded in
2 the Secretary of State’s online record. Dkt. No. 8 at 5. East River did not list the
3 names of any corporate officers or agents, nor did it provide any additional
4 addresses or contact information. *Id.*

5 The Secretary of State’s online record also includes this heading:

6 **Service of Process on the Secretary of State as Agent**
7

8 *Id.* Under this heading, the site confirms that East River’s Brooklyn address is the
9 “address to which the Secretary of State shall mail a copy of any process against the
10 corporation served upon the Secretary of State by personal delivery[.]” *Id.*

11 Plaintiff’s process server attempted to serve East River at the Brooklyn
12 address three times—on May 11, May 13, and May 14, 2024. Dkt. No. 7 at 1. On two
13 attempts, the person who answered at the Brooklyn address told the process server
14 that East River does not operate there. *Id.*

15 3. DISCUSSION

16 3.1 Judicial notice.

17 As a preliminary legal matter, the Court grants Plaintiff’s request for judicial
18 notice under Fed. R. Evid. 201 and considers the information that Plaintiff provided
19 from the New York Secretary of State’s website. The Court finds that the business
20 information on the website is “not subject to reasonable dispute,” as it “can be
21 accurately and readily determined from a source[] whose accuracy cannot
22 reasonably be questioned.” Fed. R. Evid. 201(b)(2). Indeed, “[c]ourts routinely take
23 judicial notice of records on file with a state’s Secretary of State and/or results

1 generated from a Secretary of State Business Search.” *Cochran v. Air & Liquid Sys.*
2 *Corp.*, 2:21-CV-09612-MEMF (PDX), 2022 WL 7609937, at *3, n. 5 (C.D. Cal. Oct.
3 13, 2022).

4 **3.2 Alternative service.**

5 Turning to the service issue, Federal Rule of Civil Procedure 4 outlines
6 service requirements. To serve a corporation, plaintiffs must “deliver[] a copy of the
7 summons and of the complaint to an officer, a managing or general agent, or to any
8 other agent authorized by appointment or by law to receive service or process,” Fed.
9 R. Civ. P. 4(h)(1)(B), or “follow[] the state law for serving a summons in an action
10 brought in courts of general jurisdiction in the state where the district court is
11 located or where service is made,” Fed. R. Civ. P. 4(e)(1), (h)(1)(A). Thus, Plaintiff
12 can meet federal service requirements by satisfying Rule 4(h)(1)(B), or by serving
13 the summons in a manner permitted under Washington or New York law.

14 Plaintiff asks for permission to serve East River by mail—a method that
15 Washington law allows in limited circumstances. Unlike other forms of service,
16 Washington law requires litigants to receive court permission before serving process
17 by mail. CR 4(d)(4). Service by mail is allowed when the plaintiff shows that:

- 18 (1) they made reasonably diligent efforts to personally serve the
19 defendants;
 - 20 (2) service by publication would be justified under Washington law; and
 - 21 (3) the defendant is as likely to receive actual notice from service by mail
22 as they would from service by publication.
- 23

1 *Russell v. Wadot Cap., Inc.*, CASE NO. C22-0531JLR, 2023 WL 4683906, at *3
2 (W.D. Wash. July 21, 2023) (citing federal and Washington law). Washington courts
3 “strictly construe[]” the service-by-publication statute. *Adams v. EMS Techs., Inc.*,
4 No. C09-1017JLR, 2009 WL 10723379, at *3 (W.D. Wash. Aug. 28, 2009) (collecting
5 Washington cases).

6 Plaintiff has not established that service by publication—and by extension,
7 service by mail—is appropriate because it has not shown the “existence of one of the
8 cases ... specifi[cally]” authorizing service by publication under RCW 4.28.100. For
9 example, Plaintiff has not shown that East River has property in Washington, *see*
10 RCW 4.28.100(1), or that East River once resided in Washington and later fled the
11 state to defraud its creditors or to avoid service, RCW 4.28.100(2). “Because service
12 by mail is only allowed if service by publication would be justified, [Plaintiff] has
13 not met the requirements under Washington law to effectuate service by mail.”
14 *Amazon.com Servs. LLC v. Indecor Home Co.*, No. C22-1560-JCC, 2023 WL
15 2573237, at *2 (W.D. Wash. Mar. 20, 2023) (denying request for service by mail
16 under Washington law because foreign defendant had no property within
17 Washington).

18 Even if service by publication were authorized, Plaintiff has not shown
19 sufficient diligence to justify service by mail. “Service by publication or mail is in
20 derogation of the common law and cannot be used when personal service is
21 possible.” *Rodriguez v. James-Jackson*, 111 P.3d 271, 274 (Wash. Ct. App. 2005).
22 Here, federal and Washington law permit plaintiffs to serve a corporation’s agents.
23 *See* Fed. R. Civ. P. 4(h)(1)(B); RCW 4.28.080(9). While it is true that East River has

1 not affirmatively listed a registered agent with the New York Secretary of State, the
 2 New York Secretary of State will accept service, as “Agent,” “by personal delivery.”
 3 Dkt. No. 8 at 5; *see also* N.Y. Bus. Corp. L. § 306(b)(1) (discussing “[s]ervice of
 4 process on the secretary of state as agent of a domestic or authorized foreign
 5 corporation”); *Abondolo v. Jerry WWHS Co., Inc.*, 829 F. Supp. 2d 120, 125
 6 (E.D.N.Y. 2011) (“service of process on a corporation is deemed complete when the
 7 Secretary of State is served”).

8 Plaintiff argues that RCW 4.28.090 prohibits serving the Secretary of State
 9 under these facts. Dkt. No. 6 at 5. But by its own terms, that statute only governs
 10 service on Washington corporations. RCW 4.28.090 (governing service of
 11 corporations “created by the laws of this state,” i.e., Washington). Because Plaintiff
 12 has not served the New York Secretary of State, the Court cannot conclude that
 13 reasonably diligent efforts have been made to serve East River. Accordingly, the
 14 Court cannot find that service by mail would “follow[] state law for serving a
 15 summons” in Washington. Fed. R. Civ P. 4(e)(1), (h)(1).

16 4. CONCLUSION

17 In sum, the Court GRANTS Plaintiff’s Request for Judicial Notice, Dkt. No.
 18 8, but DENIES Plaintiff’s Motion for Alternative Service, Dkt. No. 6.

19 Dated this 26th day of July, 2024.

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21 Jamal N. Whitehead
 22 United States District Judge
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